

## **NOTICE OF ADOPTION OF EMERGENCY REGULATIONS**

### **California Code of Regulations Title 15, Crime Prevention and Corrections Division 3, Department of Corrections**

**NOTICE IS HEREBY GIVEN** that the Director of the Department of Corrections (CDC), pursuant to rulemaking authority granted by Penal Code (PC) Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend section 3097 in the California Code of Regulations (CCR), Title 15, Division 3 relating to the restitution fine and direct order collection.

#### **PUBLIC HEARING:**

Date and Time: January 14, 2003 from 9am – 11am  
Place: Department of Water Resources Auditorium  
1416 Ninth Street  
Sacramento, CA 95814  
Purpose: To receive comments about this action.

#### **PUBLIC COMMENT PERIOD:**

The public comment period will close January 14, 2003 at 5pm. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 322-3842; or by e-mail at [RPMB@executive.corr.ca.gov](mailto:RPMB@executive.corr.ca.gov) before the close of the comment period.

#### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

**Rick Grenz, Chief,  
Regulation and Policy Management Branch  
Department of Corrections  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 322-9702**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**C. Mraz,  
Regulation Management Unit  
Telephone (916) 322-9702**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Sandi Menefee, Assistant Director  
Office of Victim Services and Restitution  
Telephone (916) 358-2436**

### **LOCAL MANDATES:**

This action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Government Code Section 17561.

### **FISCAL IMPACT STATEMENT:**

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

### **EFFECT ON HOUSING COSTS:**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

### **ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:**

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

### **CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

### **AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

The Department has prepared and will make available the text and the Initial Statement of Reasons of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and

all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, Initial Statement of Reasons, and the Notice of Proposed Action will also be made available on the Department's website <http://www.cdc.state.ca.us>.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

#### **AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action will amend provisions governing restitution fine and direct order collection. These regulations allow the CDC to collect the maximum amount allowed by the Penal Code and subsequently align the CDC with the California Youth Authority (CYA), who is currently collecting restitution from its wards at a rate of 50 percent in accordance with the Welfare and Institutions Code. Both the CDC and the CYA report through the Youth and Adult Correctional Agency, therefore, by aligning the CDC's restitution collection rate with that of the CYA will not only provide consistency in government operations, it will standardize the collection rate for all victims in California.

**Subsection 3097(a) is amended** to change the rate at which a direct order of restitution imposed by a court is collected from 20 percent to 30 percent. This change is necessary to gradually increase the amount of direct order restitution imposed by a court to the maximum amount allowed pursuant to Penal Code Section 2085.5. The exceptions are now enumerated in subsection (h) due to the reorganization of subsections (e) and (f). This section also includes that a total deduction of 33 percent shall remain in effect through June 30, 2004, at which time subsection (b) shall take effect. This is necessary in order to give an ending date to the 33 percent deduction and to give direction with regard to when and at what percentage rate the next increase will take effect with the purpose of gradually increasing to the maximum amount allowed by the Penal Code.

**New subsection 3097(b) is adopted** to provide that effective July 1, 2004, and thereafter, any direct order of restitution imposed by a court shall be deducted at a rate of 50 percent, or the balance owing, whichever is less including an administrative fee for a maximum deduction up to 55 percent. This section is necessary in order to set forth the starting date, and the rate at which the CDC is to collect the restitution fines and direct orders pursuant to Penal Code Section 2085.5.

**New subsection 3097(c) is amended** to change the rate at which a restitution fine imposed by a court is collected from 20 percent to 30 percent. This change is necessary to gradually increase the amount of restitution fines imposed by a court in order to eventually increase to the maximum amount allowed pursuant to Penal Code Section 2085.5. The exceptions are now enumerated in subsection (h) due to the reorganization of subsections (e) and (f). This section includes that the funds collected, less the administrative fee, shall be transferred to the Victim Compensation and Government Claims Board, formerly the State Board of Control. This section also includes that a total deduction of 33 percent shall remain in effect through June 30, 2004, at which time subsection (d) shall take effect. This is necessary in order to give an ending date to the 33 percent deduction and direction with regards to when and at what percentage rate the next increase will take effect with the purpose of gradually increasing to the maximum amount allowed by the Penal Code.

**Subsection 3097 (d) is adopted** to provide that effective July 1, 2004, and thereafter, any restitution fine imposed by a court shall be deducted at a rate of 50 percent, or the balance owing, whichever is less, including an administrative fee for a maximum deduction of up to 55 percent. In addition, this section includes that the total amount deducted, less the administrative fee, shall be transferred to the Victim Compensation and Governmental Claims Board. The amount deducted, less the administrative fee, shall also be credited against the amount owing on the fine. This section is necessary in order to set forth the rate at which CDC is to collect the restitution fines and direct orders pursuant to Penal Code Section 2085.5.

**New subsection 3097(e) is amended** to remove the “/s” from the words direct order and fine and replace them with “(s)” for consistency purposes.

**New subsection 3097(f) is amended** to replace the word “on” with “from” in order to make the sentence grammatically correct. This amendment also replaces the words “in the continuous custody” with “under the jurisdiction” so that these fines and direct orders of restitution can be collected from inmates that are under the jurisdiction of the CDC, which includes when the inmate is on parole and not necessarily in the CDC’s custody.

**New subsection 3097(g) is amended** to state that fines and direct orders may be collected from inmates and parole violators housed in a Reception Center in addition to the previous mentioned facilities, which allows the CDC to collect from inmates regardless of their location pursuant to PC Section 2085.5. This section also states that fines and direct orders may also be collected from inmates in the Community Prisoner Mother and Family Foundation Programs and are no longer exempt.

**New subsection 3097(h) is amended** to provide that federal disability payments, veteran benefits, any refunds paid to an inmate as a result of a claim for lost or damaged property, or money reimbursed to an inmate due to a failed attempt to purchase merchandise are exempt from fines and direct orders of restitution. This amendment is necessary to provide instructions as to what funds are not to be used for collecting restitution.

**New subsection 3097(i) is amended** to reference subsections (c) and (d) in order to include the renumbered and newly adopted subsections pertaining to court imposed fine and direct order of restitution collection.

**New subsection 3097(j) is amended** to provide that funds originating from the inmate’s trust account to pay for a family visit or Temporary Community Leave shall have a hold placed on the amount identified by the inmate for the upcoming visit or leave. In the event that the family visit or Temporary Community Leave does not occur, then the hold previously placed on these funds shall be removed and the funds returned to the inmates trust account with no restitution deductions being made.

**New subsection 3097(k) is amended** to provide that in the event that a family visit does not occur, then the funds intended for the family visit, as specified on CDC Form 1839, will have a hold placed on them for future family visits, until the inmate is placed on parole, or transferred to another institution. No restitution deduction shall be made from these funds. This section was also reworded for clarity.

**Subsection 3097(l) is adopted** to provide that in the event that the Temporary Community Leave does not occur, then the funds indicated on Form 1839 shall be refunded to the sender. In addition, this section is necessary to ensure that funds received and intended for a Temporary Community Leave that does not occur, are returned to the sender and not placed in the inmates trust account or used for fines or direct orders.

**Subsection 3097(m) is adopted** to provide that in the event a Temporary Community Leave does occur, any remaining portion of the funds designated on the Form 1839, shall be refunded to the sender.